

ENTERED

January 12, 2016

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

ANNUAL DAVIDSON, III,

Plaintiff,

VS.

MARUTI TRANSIT GROUP, *et al*,

Defendants.

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CIVIL ACTION NO. 2:13-CV-388

OPINION AND ORDER GRANTING MOTION FOR LEAVE TO AMEND

Pending is Plaintiff's motion for leave to file a third amended complaint (D.E. 59). Defendants have filed their response in opposition, claiming that new claims and new parties have been added that are barred by limitations and for failure to timely exhaust (D.E. 60).

Amendments before trial are governed by Rule 15(a) of the Federal Rules of Civil Procedure. A party may amend its pleading once as a matter of course within 21 days after serving it. FED. R. CIV. P. 15(a)(1)(A). In all other cases a party may amend its pleading only with the opposing party's written consent or the court's leave. FED. R. CIV. P. 15(a)(2). "The court should freely give leave when justice so requires." *Id.*

Determining when justice requires permission to amend rests within the discretion of the court. *Zenith Radio Corp. v. Hazeltine Research, Inc.*, 401 U.S. 321, 330, 91 S.Ct. 795 (1971); *Nilson v. City of Moss Point, Miss*, 621 F.2d 117, 112 (5th Cir. 1980). The district court need not grant leave to amend if the amendment(s) sought would be futile.

Central Laborer's Pension Fund v. Integrated Elec. Svcs. Inc., 497 F.3d 546, 556 (5th Cir. 2007) (citing *Foman v. Davis*, 371 U.S. 178, 182, 83 S.Ct. 227 (1962)).

Under the circumstances of this case, justice requires permitting the amendment. The issues raised in the response to the motion to amend, i.e. limitations and failure to exhaust, can be addressed by Defendants in their answer and/or by motion prior to trial. The motion for leave to file a third amended complaint (D.E. 59) is GRANTED. The Clerk shall file the third amended complaint attached to Plaintiff's motion.

ORDERED this 12th day of January, 2016.


B. JANICE ELLINGTON
UNITED STATES MAGISTRATE JUDGE